REMARKS

Claims 26, 27 and 38 are rejected under 35 USC 102(a) as being anticipated by U.S. Patent 6,021,598 to Holton.

Regarding Claims 26, 27, 38 Holton teaches a colored mulch product (Holton abstract) consisting essentially of a material comprising fiber cellulose, clay, loam ,sand, and/or a combination of same; binding agent (Holton, water claim 1); and a dye and/or pigment (Holton Col. 4, line 8-10); the mulch product not being in the form of a mat (Holton, Col. 6, lines 1-24). Holton teaches a dye and that the dye indicates to a user environmental conditions of the soil where the mulch is placed. The mulch of Holton includes a dye, seed and a fertilizer (Holton, Col. 6, lines 1-3). Therefore, when the user sees the mulch color the user will known that mulch has been applied to that portion of soil along with a fertilizer/seed, i.e., that soil portion has been fertilized/seeded which is an environmental condition.

Applicant submits the Declaration of Charles Holton. Mr. Holton has 30 years of experience in the field of turf grass establishment and erosion control, 10 years as CEO of Ampro Industries, a manufacturer of pelleted mulch and other products (Holton Declaration, paragraph 1). Mr. Holton has reviewed the application of the present invention. (Holton Declaration, paragraph 2). Mr. Holton is the inventor of the prior art at issue in the Office Action, patent no. 6,021,598. (Holton Declaration, paragraph 3) Mr. Holton has read of the Office Action of October 8, 2009. (Holton Declaration, paragraph 3).

Regarding color, Mr. Holton stated that his patent specifically taught that a mulch colored with a green dye, when applied to the soil, will give the visual appearance of the color of grass once applied to the soil. Nowhere does Mr. Holton's patent teach nor did he invent, the use of a colored mulch to serve as an indicator for environmental conditions, including as a watering indicator where the mulch changes colors based on the specific environmental condition relating to the presence and/or absence of water. Rather, this concept is clearly taught by the Encap patent of which, based on Mr. Holton's knowledge Encap is the inventor of. (Holton Declaration, paragraph 4).

Therefore, the Examiner is incorrect that Holton teaches a dye and that the dye indicates to a user environmental conditions of the soil where the mulch is placed. No one of skill in the art including the inventor of the prior art himself, would believe that Holton anticipates or makes obvious Claims 26, 27 and 38 of the present invention. Therefore, these claims are not anticipated or obvious over the prior art.

Claims Rejections 35 USC 103

Claims 26, 27, 28, 29, 30, 38 50 are rejected under 35 USC 103(a) as being unpatentable over U.S. Patent 6,021,598 to Holton in view of U.S. Patent 6,019,062 to Lombard et al.

Regarding Claims 26, 28, 29, 30 and 50, Holton teaches a colored mulch product (Holton abstract) consisting essentially of; a material comprising a fiber cellulose, clay, loam, sand, and/or a combination of same; a binding agent (Holton Claim 1, water);

and a dye and/or pigment (Holton Col. 4, lines 8-10). Stevens teaches a dye, but is silent on the dye indicates to a user environmental conditions of the soil where said mulch is placed; the dye indicates to a user the acidity of said soil; the dye indicates to a user the moisture content of said soil; or the dye indicates to a user the chemical content of said soil and is an environmentally safe dye (Lombard abstract second to last line).

However, Lombard et al. teaches a dye indicator i.e. a pH indicating dye for application to cellulosic material such as paper (Lombard col. 2, lines 1-5 and col 2 lines 11-15; col. 2, line 60-67). It would have been obvious to one of ordinary skill in the art modify the teachings of Holton with the teachings of Lombard at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate dye selected for the known advantage of monitoring pH levels as taught by Lombard and is an environmentally safe dye as taught by Lombard (Lombard abstract).

As stated in his Declaration Mr. Holton would not consider modifying his teachings with the teachings of Lombard to be merely an engineering design choice. As stated in Mr. Holton's patent, the dye is specifically used to impart a green color to the granules. Further, the reason for the dye is purely for aesthetic reasons to make the color of the mulch resemble that of actual grass, i.e. a Kelly green color. Since Lombard does not teach a green dye, there would be no reason for Mr. Holton to use the teachings of Lombard. Further, since his patent does not teach the mulch being able to indicate environmental conditions, there is no reason that he would

have chosen a dye which monitors pH levels as taught by Lombard. (Holton Declaration, Paragraph 5).

For all of these reasons, the above claims are not obvious over the prior art.

Regarding Claim 27, Holton as modified teaches the mulch comprising; nitrogen, phosphorus, and potassium fortifiers (Holton Claim 8).

For all of the above reasons, Claim 27 is not obvious over the prior art.

Regarding Claim 38, Holton as modified teaches the mulch is the same or similar color of an actual plant, flower, fruit, or vegetable of a seed planted with the mulch (Holton. Col. 4, lines 8-10).

For all of the above reasons, Claim 38 is not obvious over the prior art.

Claim 52 is rejected under 35 USC 103(a) as being unpatentable over US Patent No. 6,021,598 to Holton in view of U.S. Patent No. 6,019,062 to Lombard et al. as applied to claim 26 above, and further in view of JP 01262735A to Yanmar Agricult Equip. Co. LTD (Yamada).

Regarding Claim 52, Holton as modified teaches a method of placing colored mulch on top of soil; changing the colors of the mulch based on the condition of the soil. Holton is silent on adding chemicals to the soil based on the color of the mulch. However, it is old and notoriously well known in the art of plant husbandry to observe and test soil conditions to see if they meet the desired parameters and to adjust the parameters when necessary. Yanmar teaches the general knowledge of one of ordinary skill in the art to add fertilizer when the pH is out of desired range. (Yanmar abstract and Figs. 1#2). General knowledge that the pH of a growing medium component

determines the addition of fertilizer. It would have been obvious to one of ordinary skill in the art further modify the teachings of Holton with the teachings of Yanmar at the time of the invention for the advantage of promoting healthy plant development. Examiner takes official notice that it is old and notoriously well known to add fertilizer based on a pH of the soil e.g. tomato plants prefer a certain acidity in the soil for healthy development so it is general practice to test the pH to determine if and how much fertilizer is needed.

The Examiner states that Mr. Holton's patent teaches a method of placing colored mulch on top of soil, and changing colors of the mulch based on the conditions of the soil. First of all, this goes against the teachings of his patent. Mr. Holton's patent specifically teaches a green color which matches the color of the grass. Mr. Holton's teachings go against that the mulch would change colors. Therefore, the comments made by the Examiner go against what Mr. Holton taught in his patent. (Holton Declaration, paragraph 6). For all these reasons, Claim 52 is not obvious over the prior art.

Claim 32 is rejected under 35 USC 103(a) as being unpatentable over US 6,021,598 to Holton in view of US Patent 6,019,062 to Lombard et al. as applied to claim 26 above, and further in view of US patent 5,734,167 to Skelty.

Regarding Claim 32 Holton as modified teaches coloring the mulch, but is silent on the dye is fluorescent. However, Skelty teaches it is old and notoriously well known to dye agricultural products with fluorescent dye allowing the mulch to glow in the dark (Skelty Col. 1, lines 35-45). It would have been obvious to one of ordinary skill in the

art to further modify t he teachings of Holton with the teachings of Skelty at the time of the invention since the modification is merely the selection of a known alternate coloring for the advantage of enabling safe night time agricultural operations as taught by Skelty (Skelty col. 1, lines 1-26).

With regards to the Examiner's statements that it would have been obvious to modify Mr. Holton's teachings with the teachings of Skelty to make the dye fluorescent, again goes against the teachings of Mr. Holton's patent. Mr. Holton specifically taught that the color of the mulch is green to match the color of grass. Since the color of grass is not fluorescent, it would not be obvious to modify Mr. Holton's teachings with the teachings of Skelty. (Holton Declaration, paragraph 7). For all of these reasons, Claim 32 is not obvious over the prior art.

Claim 32 is rejected under 35 USC 103(a) as being unpatentable over US Patent 6,324,781 to Stevens in view of US Patent 5,734,167 to Skelty.

Regarding Claim 32, Holton teaches coloring the mulch, but is silent on the dye is fluorescent. However, Skelty teaches it is old and notoriously well known to dye agricultural products with fluorescent dye allowing the mulch to glow in the dark (Skelty col. 1,, lines 35-45). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Holton with the teachings of Skelty at the time of the invention since the modifications is merely the selection of a known alternate coloring for the advantage of enabling safe night time agricultural operations as taught by Skelty (Skelty col. 1, lines 1-26).

Applicant is confused with this rejection. The rejection states Stevens in view of Skelty, however, the recitation by the Examiner discusses Holton in view of Skelty. Applicant has already addressed the rejection to Holton in view of Skelty above.

Claim 47 is rejected under 35 USC 103(a) as being unpatentable over US 4,067,140 to Thomas in view of US 6,019,062 to Lombard et al.

Regarding Claim 47, Thomas teaches a colored mulch product (Thomas abstract) comprising; a material comprising a fiber cellulose (Thomas abstract first line), clay, loam, sand, and/or a combination of same; a binding agent (Thomas col. 1, line 30 "wetting agent" and col. 4, lines 35-41); and a dye and/or pigment (Thomas col. 1, line 35) produced by a lifting and tumbling agglomeration operation (Thomas col. 2, line 65-66). Thomas teaches adding fertilizer to the mulch mixture (Thomas col. 1, line 15). The language "indicates to a user environmental conditions of the soil where the mulch is place" is functional language/result of the use of the product that the product is "capable" of performing. The applicant has not claimed a specific type or special dye; applicant has not claimed what environmental conditions; applicant has not claimed how the dye works. Applicant has merely claimed a dye. The color from the dye is capable of indicating to the user that the mulch has been placed on a desired surface and that the environmental condition of the soil under t hat mulch is in a stage of fertilization since fertilizer is present in the mulch and over time will be absorbed into the soil. The mulch can also contain seeds (Thomas col. 1, line 15), so when the mulch which is placed in position and has seeds present it indicate sot the user that the

"environmental condition" of that soil area is "planted". Applicant has not patentably distinguished over the prior art of record. It can also be argued that Thomas is silent on the dye indicates to a user the environmental conditions of the soil where the mulch is placed. However, Lombard et al. teaches a dye indicator i.e. a pH indicating dye for application to cellulosic material such as paper (Lombard Col. 2, line 1-5 and Col. 2 line 11-15; col. 2, line 60-67). It would have been obvious to one of ordinary skill in the art to modify the teachings of Stevens with the teachings of Lombard at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate dye selected for the known advantage of monitoring pH levels as taught by Lombard.

The Examiner is incorrect in the recitation that the language relates to being capable of performing. The claim language states that the dye indicates to a user environmental conditions. The language does not state that it may indicate or can indicate environmental conditions but that it indicates environmental conditions. As the claim states, the dye indicates to the user the environmental conditions. The Examiner cannot change the language of the claims. Therefore, based on the language of the claims, the prior art does not teach or make obvious the above claim.

Claim 50 is rejected under 35 USC 103(a) as being unpatentable over US 6,324,781 to Stevens in view of US 5,697,984 to Swatzina.

Regarding Claim 50, Stevens teaches a colored mulch product wherein the color but is silent on the mulch product fades or disappears in response to a lack of fertilizer

in the mulch. Stevens teaches the mulch product is made up of fertilizer (Stevens abstract last sentence), mulch plus fertilizer makes a mulch product. Swatzina teaches it is old and notoriously well known to color fertilizer (e.g. red fertilizer Swatzina; col. 2 line 31-33 and Example 4). One of ordinary skill in the art would be motivated to modify the teachings of Stevens with the teachings of Swatzina at the time of the invention for a desired aesthetic design. Stevens as modified by Swatzina, i.e. the selection of red fertilizer, would inherently teach that as the red disappears or fades from the mulch the fertilizer is disappearing too.

This goes against the teaching of Stevens. At col. 6, lines 35-57 Stevens specifically teaches, "if desired, a coloring may be added to any mat to enhance the appearance of the mat in use. For example, the color may be green to match a lawn or grass area." If the dye would change colors according to Swatzina, it would not have the appearance as required by Stevens. Therefore, this is not merely a simple substitution, but adding the teachings of Swatzina would go against the teachings of Stevens.

Claim 50 is rejected under 35 USC 103(a) as being unpatentable over US 6,021,598 to Holton in view of US 5,697,984 to Swatzina et al.

Regarding Claim 50, Holton teaches a colored mulch product wherein the color, but is silent on the mulch product fades or disappears in response to a lack of fertilizer in the mulch. Holton teaches the mulch product is made up of fertilizer (Holton Claim 8), mulch plus fertilizer makes a mulch product. Swatzina teaches it is old and notoriously well-known to color fertilizer (e.g. red fertilizer Swatzina; col. 2, lines 31-33

and Example 4). One of the ordinary skill in the art would be motivated to modify the teachings of Holton with the teachings of Swatzina at the time of the invention for a desired aesthetic design. Holton as modified by Swatzina, i.e. the selection and red fertilizer, would. inherently teach that as the red disappears or fades from the mulch the fertilizer is disappearing.

With regards to the Examiner's statements that one of skill in the art would be motivated to modify the teachings of Holton with the teachings of Swatzina, for an aesthetic design, Mr. Holton specifically disagreed. The Examiner states that Holton as modified by Swatzina, the selection of a red fertilizer would inherently teach as the red disappears or fades from the mulch, the fertilizer is disappearing too. This again goes against the teachings of Mr. Holton's patent. Mr. Holton's patent specifically teaches a green color to match grass. It would be against his teachings to have a red color since red does not match grass. Further, as stated above, it is not in the teachings of his patent for the color to fade, based on fertilizer disappearing, nor would he want the color to fade. (Holton Declaration, paragraph 8). For all of these reasons, Claim 50 is not obvious over the prior art.

Applicant believes that the application is in condition for allowance.

Respectfully submitted,

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Date

Debbie Broderick